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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,079	06/01/2005	Brita Diego	FE 6106+6085 (US)	8247
34872	7590	09/27/2007		
BASELL USA INC. INTELLECTUAL PROPERTY 912 APPLETON ROAD ELKTON, MD 21921			EXAMINER MCDONOUGH, JAMES E	
			ART UNIT 1755	PAPER NUMBER
			MAIL DATE 09/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/537,079

Applicant(s)

DIEGO ET AL.

Examiner

James E. McDonough

Art Unit

1755

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 17 September 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

J.A. LORENZO
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that Yang et al. does not teach a compound with the same ratio of alcohol and lewis base, this is not persuasive because Yang et al. clearly teaches ratios that overlap with the claimed ratios (column 3, lines 45-66). Applicants then argues that Yang et al. does not teach applicants currently claimed solid, this is not persuasive because Yang et al. clearly teaches solids (abstract) and a reference is good for all that it teaches, and as stated in the last rejection just because a compound is in solution does not preclude it from being solid, as scientific reasoning would expect identical compounds to have identical properties such as phase of a material at standard conditions, since properties are inseparable from the composition itself, furthermore, the claims use comprising language and do not exclude a solvent being present, and applicants have not submitted any evidence that the identical compounds of the reference would not be solid. Applicants argue that the reference of Yang et al. use different lewis bases than the instant application, but looking at the instant claims tetrahydrofuran is the most narrowly claimed lewis base and is also claimed in the reference, so therefore, the lewis bases disclosed are identical to the ones claimed, contrary to applicants assertion of being different. Applicants request examiner to submit objective, factual evidence showing that the compound of the reference would indeed be solid, however, applicants are reminded that there are no test facilities at the USPTO and this burden of proof is clearly on the applicants to prove that the compound of the reference would not be solid. Applicants argue that the examiner has not established a prima facie case of obviousness because examiner has not pointed out column and line numbers that teach the limitations, this is not persuasive because column and line numbers of the reference were clearly pointed out in the rejection, and applicants are respectfully requested to read the rejection, where this will be clearly seen. Applicants argue examiner contention that the ratio of alcohol/lewis base/magnesium halide are result effective variables and, ask what is being optimized, first the reference does teach ranges of ratios that overlap with the instant application, second the amounts of lewis base and alcohol will 1.) affect the solubility of the compounds and 2.) adjust the amount of electron donation to the catalyst, which is well known to effect activity. Applicants argue against the 103 rejection of liskolan et al. should be withdrawn because liskolan does not explicitly teach the use of 2.5 ROH per magnesium halide, however this is not persuasive because liskolan clearly teaches the range of alcohols from 1-6 per magnesium halide (column 10, lines 35-45) and one skilled in the art would expect success based on liskolan's disclosure that these ratios/ranges work. Applicants then argue that the broad disclosure of liskolan does not anticipated applicants range, this is not persuasive because the disclosed range is not that broad (i.e. 1-6), and applicants have not shown any criticality of this range, furthermore, optimizing a range is considered obvious to someone of ordinary skill ion the art. Applicants then further argue that the examiner has not provided reasons as to why one would be motivated to modify the reference and have a reasonable expectation of success, this is not persuasive because liskolan disclose ranges that overlap with the instant invention, and since patents are presumed valid the fact that liskolan teaches this range is suggestion of a reasonable expectation of success, and the reference does not have to be modified to disclose the limitation of the amounts of alcohols and lewis bases, furthermore, these are result effective variables for the reasons as stated above. Applicants request clarification of whether the original rejection are being upheld, yes, the original rejection are being upheld, as there have been no persuasive arguments against them. Applicants then argue that 102 rejection of Yang et al. and that it doesn't anticipate the invention because it doesn't teach a solid, this is not persuasive because Yang et al. clearly teaches a solid (abstract) as stated above, therefore, it is not obvious because the reference teaches a solid, however, absent this disclosure in the reference, it would also be obvious. Applicants argue that the 102 rejection of liskolan should be withdrawn because liskolan does not teach the use of 2.5 ROH per magnesium halide, this is not persuasive because 2.5 ROH per magnesium halide is not what is claimed, what is claimed is a range and liskolan discloses a range that overlaps with that of the instant application, therefore, anticipating this limitation, contrary to applicants assertion that it does not. Applicants then argue the 103 rejection of Yang in view of liskolan, stating that they have unexpected results, this is not persuasive because 1.) the results are not submitted as a proper affidavit, 2.) the results are not fully commensurate with the scope of the claims and 3.) the results to not show the instant application to be superior over the references 4.) comparing averages of well-selected examples does not and cannot show unexpected/superior results. Applicants then again argue the solid v. solution debate, but submit no evidence that a solid ceases being solid when it is dissolved in solution, then request the examiner to show objective factual evidence that the compounds of the reference are indeed solid, again applicants are reminded that there are no test facilities at the USPTO, and this burden of proof is clearly on the applicants shoulders to prove otherwise. Applicants ask for a clarification about the statement that " glucose does not stop being solid because it is dissolved in water" and state that they fail to see a nexus between glucose (an organic compound) and applicants currently claimed compound (metal organic), examiner was not trying to show that glucose and metallo organic compounds are the same, obviously they are not, but was trying to demonstrate that any compound has certain physical properties such as being solid under standard conditions and that these properties are inseparable from the compound itself, and that simply dissolving a solid in a solvent does not change the properties of the compounds such as being solid, furthermore, the definition of solution is the mixing/dissolving of a solid, liquid or gas into a liquid, so therefore, it is again stated that just because a compound is in solution does not prevent it from being solid, and even further still the reference does clearly teach solids (abstract) and a reference is good for all that it teaches. Applicants argue that even though the ranges overlap with the instant invention does not mean that they anticipate it, but provide no evidence that this is the case or why the reference lacks "sufficient specificity", but only offer mere allegations that this is so. Applicants then argue that they are not aware of how or why the currently claimed solid adducts are being rejected as being anticipated or obvious given the fact that applicants had this range in their original claims, examiner was not using this as a basis for the rejection but only to note that the ranges in the reference were the exact ranges of the instant claims as originally filed, and the narrow ranges now claimed appear to be reset only to overcome the references, and applicants have not shown any criticality of this narrower range or why it is not anticipated or obvious over the reference which overlaps this disclosed this range. Examiner would like to thank applicants for pointing out that the reference teaches 345 g of PP per gram of Ti and not per gram of catalyst, however, this still does not make the application allowable, and it is even further confusing how applicants claim that liskolan catalyst activity range from 1.6- 5.2 g of PP per gram of catalyst, when we can clearly see from looking at this example that Ti is 2 wt % of the catalyst, which would give around 7 g of PP per gram of catalyst and the example immediately above this is calculated at over 8 g of PP per gram of catalyst, which is considerably higher than what applicants allege the activity is, and further reason to believe that the examples were carefully selected to try to show unexpected/superior results .